

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment

FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

DATE: February 2, 2010

SUBJECT: BZA Case No. 18017. 1216 D Street, S.E. (rear) (Square 1017, Lots 85 and 817)

I. SUMMARY RECOMMENDATION

In a self-certified application, the applicant is requesting approval of use variances from §§ 2507.1 and 2507.3 to convert a structure on an alley lot into a 2-household flat for human habitation. At this time **OP cannot recommend approval of the requested use variances.**

The applicant has received considerable support from its ANC, the Capitol Hill Historical Society, and from neighboring properties. However, the Zoning Regulations set a high bar for the conversion of an alley lot building to a residential use, particularly for a building on an alley lot with connections to the street that are less than thirty feet wide. Typically, OP has not been able to support such conversions due to the following regulation: § 2507.3 *...Nonresidential structures located on these alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost.* In this case the applicant has demonstrated that at least a degree of the proposed use would not be substantially harmful to the neighborhood. However, OP cannot recommend approval because the applicant has neither demonstrated that the cited unique conditions and resulting undue hardship are proportional to the requested relief for a 2-household dwelling; nor shown that the requested relief would not pose substantial harm to the current zone plan.

II. APPLICATION IN BRIEF:

The applicant owns a 7,316.5 square foot alley lot improved with a 5,150 square foot structure that has historically been used as a warehouse, but for which no certificate of occupancy has been found. The lot has frontage on 30-foot alleys, but connects to the street system via an alley that is only fifteen feet wide.

The applicant wishes to convert the structure into a two-unit flat and is asking for relief to do so. The applicant has filed for a use variances from the following regulations:

- § 2507.1 *Except for use as a one-family dwelling, a structure shall not be erected, constructed, converted, altered, remodeled, restored, or repaired for human habitation on an alley lot.*
- § 2507.3 *An existing one-family dwelling located on an alley lot that abuts an alley less than thirty feet (30 ft.) in width shall not be converted, altered, remodeled, restored, or repaired for use as a one-family dwelling if the cost of the conversion, alteration, remodeling, restoration, or repair exceeds one-half of the value of the structure*



immediately prior to the time of the conversion, alteration, remodeling, restoration, or repair. Nonresidential structures located on these alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost.

III. AREA AND SITE DESCRIPTION

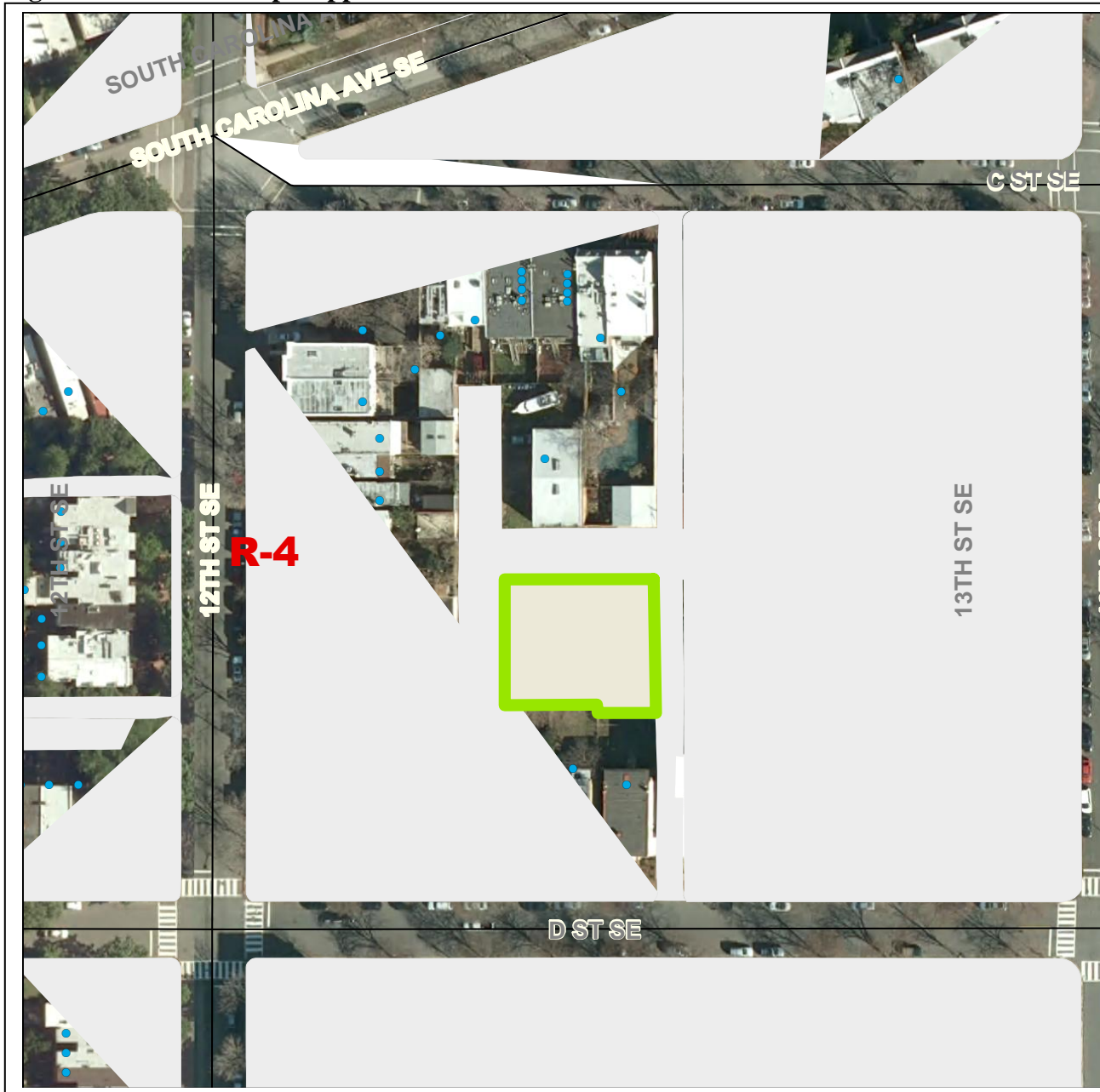
The subject property is located at 1216 D Street S.E. (rear). It consists of two adjacent alley lots (85 and 817) located in the middle of Square 1017. The Square is bounded by C, D, 12th and 13th Streets, S.E. It is a residential Square and is zoned R-4. The site (outlined in green) is in the southwestern quadrant of the block. The site is bounded by 30 foot alleys on the north and west, the back yards of residential buildings facing D Street on the south, and a 15-foot wide alley on the east. Street access is provided to both C and D Streets via the 15' alley. The easternmost stubs of the alley system are 20' wide.

Address:	1216 D Street, S.E., (rear)
Legal Description:	Square 1017, Lots 85 and 817
Ward:	6
Lot Characteristics:	Rectangular, flat, 7381.5 SF alley lot with 15-foot wide alley access to street
Existing Development:	Vacant structure formerly used as a warehouse/storage
Zoning:	R-4
Historic District	Yes, contributing structure Capitol Hill historic district
Adjacent Properties:	Residential rowhouses used as single family residences, flats and apartments; private garages and one single family house within alley, but on a flag lot
Surrounding Neighborhood Character:	Low to moderate density residential

The applicant's lot contains a 5,200 square foot one-level building that is approximately 1 ½ stories tall. The principal portion of the building is a large open space with no interior partitions. There is an eastern addition that houses seven vacant attached private garages. The building occupies 70% of the two lots. The (southern) rear yard varies from 5 to 10 feet. The (western) side yard is 21 feet wide. There is also a 2-foot wide eastern side yard. The building has wood-frame construction with brick walls, and an unreinforced concrete floor. The structure has windows only on its southern face. It is not connected to the water, sewer or electric systems, has holes in sections of the roof, evidence of repair from previous fires, and is in generally deteriorated, but repairable, condition.

The building is a contributing structure to the Capitol Hill Historic District.

Figure 1. Location Map. Applicant's Site is Outlined in Green



The structures facing the Square's bounding streets are residential. The building types are primarily two and three story row houses and semi-detached houses. Some of these have been subdivided into duplexes or small apartment buildings. As with some other Squares in Capitol Hill, the interior of the Square has a variety of building-types and uses. Some of the lots off of the alley system -- such as the applicant's lots, and the lot to the north, at the rear of C Street -- have one to one and one-half story light industrial buildings and uses dating from the 19th and early 20th centuries. Others have private garages at the rear of residential lots fronting on streets. One lot -- 1253 C Street -- is a flag lot fronting on C Street. In the mid 1990's the property's owner built an approximately 5,000 square foot house occupying most of the back portion of the lot, which is bordered by two of the inner-block's alleys, but left undeveloped the narrower portion of the lot that connects to C Street, in order to provide the lot with street frontage.

IV. ZONING REQUIREMENTS

The applicant has requested a § 3103.2 use variance (exceptional and undue hardship) from §§ 2507.1 and 2507.3. Those regulations are quoted in full on the second page of this report.

The alley lot regulations contain another section that is implicitly incorporated into § 2507.3:

§ 2507.2 A one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet (30 ft.) or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30 ft.) in width.

In other words, the prohibitions apply not only to lots that abut alleys less than thirty feet wide, but also to alley lots that abut alleys that are at least 30 feet wide, but that connect to a public street only via an alley that is less than 30 feet wide.

The applicant seeks a use variance for a 2-household flat specifically. The applicant believes that the current structure may already be used as a matter of right as a single-family residence. In conversations with OP, the Zoning Administrator (ZA) has not agreed with this interpretation.¹

The existing structure is non-conforming with respect to lot occupancy and side yard requirements. However, § 2004.1 exempts the historically contributing structure from having to be brought into physical conformity.

V. OP ANALYSIS OF REQUESTED USE VARIANCE

OP has analyzed the applicant's requested as submitted: a request for relief to convert an alley structure to a flat, when the property is connected to the street by alleys less than 30 feet wide.

A. Is the property unique due to:

- Exceptional narrowness, shallowness, or shape at the time of original zoning regulation adoption.
- Exceptional topographical conditions or
- Other extraordinary or exceptional situation?

The applicant states that the property has several unique conditions.

- The lots, the building footprint and the structure are uniquely large for an alley lot in Square 1017 and unusually large for Capitol Hill generally.
 - *OP agrees that the size of the alley lot is uniquely large, compared to most other alley lots in the area.*

¹ Since submission of the Pre-Hearing Statement, the applicant has clarified to OP that it had intended to indicate it regards single family residential use as a matter of right use, not as a special exception use as indicated in the Pre-Hearing Statement. The applicant interprets § 2507.3 as permitting the matter-of-right use of the applicant's structure as a one-family dwelling, because – despite its prior use as a storage facility -- there is no record of the structure's having had any certificate of occupancy. The applicant believes that the structure is simply a structure, not classifiable as either a residential structure or as a nonresidential structure. In the applicant's view, the building is not, therefore, a nonresidential structure that is prohibited from conversion to a residential use by the last sentence of § 2507.3. In a conversation with OP, the Zoning Administrator stated that he considers the structure to be a nonresidential building because it has historically been used a storage/warehouse facility, and because it has no water, sewer or electric connections, or other evidence of prior residential use, such as a kitchen, bedroom or bathroom.

- The site has suffered considerable physical deterioration and lacks connections to water, sewer and electricity, so would be uniquely expensive to bring back to functional use.
 - *OP does not agree that all of these conditions are unique. It is not unusual for an alley structure to be seriously deteriorated and in poor structural conditions. Alley structures were often built to lesser standards than buildings on principal streets. It is not unusual for such structures to lack access to utilities; the Board has reviewed several such alley structures recently.*
- The open, barn-like, interior loft space is exceptional in Square 1017, and generally for a property in an R-4 zone.
 - *OP disagrees. The applicant has stated what may be likely, but has not demonstrated it. Since many alley structures were used for storage or industrial purposes, it is possible that many of them have open floor plans and high ceilings.*
- The site does not have access to the street system via an alley that is at least 30-feet wide, even though it is bordered by 30' alleys on two sides.
 - *OP disagrees. It is not unusual for an alley structure to be connected to the street via an alley less than 15 feet wide. It is also not unusual for an alley system to be significantly wider at the interior of a block than it is at the segments connecting to streets. Most importantly, OP does not accept that the zoning regulations themselves constitute the unique feature, as they apply to all lots in the District.*
- The building is a contributing structure to an historic district, and could be subject to expensive Historic Preservation Review Board requirements.
 - *OP does not agree that this is unique, as this is true of any type of building in any historic district.*

B. Does the uniqueness, in combination with the zoning regulations, result in exceptional and undue hardship upon the owner?

The applicant proposes the following as undue hardships that result from the identified unique conditions.

- The general difficulty in re-using the property for a matter of right use has been demonstrated by its having been listed for 17 months, until the applicants purchased the property for approximately ½ of the original asking price. The applicant has also submitted information in Exhibits B, C and D of the pre-hearing statement that documents why the applicant would suffer undue hardship in attempting to market or use the property for a matter of right artists' studio or as a special exception warehouse/storage use.
 - *The applicant is attempting to demonstrate that the strict application of the Zoning Regulations would make difficult the property's use for any non-residential purpose that is permitted in an alley lot structure in the R-4 zone as either a matter of right, or as a special exception. However, the applicant has not yet demonstrated that the use of the building as a flat is either warranted or necessary to avoid the imposition of an undue*

hardship. Nor has the applicant established a proportional relationship between the undue hardship and the degree of relief being requested

- The applicant demonstrates that a 5,150 square foot alley dwelling would be exceptionally large for a row-dwelling on Capitol Hill,
 - *The application did not demonstrate that the size would be unique. Within the same Square as the applicant's property, an owner constructed an approximately 5,000 square foot single family house in the 1990's. Although the house is on a flag lot, not an alley lot, all of the house's perimeter lies behind the structures that front directly onto streets and the house is generally not visible from those streets.*
- C. Would granting the variance result in a substantial detriment to the public good or will it substantially impair the intent, purpose, and integrity of the zone plan?

Public Good

OP agrees that the applicant has demonstrated that the granting of relief should not likely have a substantially negative impact on the public good because:

- Residential use would reinforce the residential nature of the entire Square.
- Residential use would likely result in lesser traffic, and fewer loading issues that permitted uses.
- Putting a vacant building to an active residential use would help to increase the security of the inner-block area for a greater number of hours than would a permitted use.
- The applicant's proposed provision of four parking spaces would minimize any parking impact the use might have.
- The privacy of properties to the north, east and west should be ensured by the property's separation from other properties by at least thirty feet on three of the four sides of the property, the limited height of the building, the conceptual design illustrated in the pre-hearing statement, and review by the Historic Preservation Review Board. The applicant intends use a privacy fence to screen views from the windows on the south side of the single floor building.
- The letters of support from the ANC and from nearby property owners indicate that residential usage would be compatible with the neighborhood.

Zone Plan

Granting the relief requested to use the building as a flat would not address the overall prohibition on the residential conversion of non-residential structures on alley lots. The applicant's building was never used as a residence, was formerly used for warehousing and storage, and has no water, sewer or electric connections. In a conversation with OP, the Zoning Administrator indicated that he considered this building to be a "non-residential structure" and covered by § 2507.3. The assumption of single-family residential usage as a matter of right, and the moving directly to requesting a use variance to use the building as a flat would pose substantial harm to the zone plan. It would effectively skip-over the important test of whether the relief requested is proportional to the undue harm.

The Zoning Regulations set a high bar for the conversion of an alley lot building to a residential use. This is particularly the case for a building on an alley lot with connections to the street only from alleys that are less than thirty feet wide, since the regulations currently specifically prohibit the conversion of such structures for residential use. As such, OP has not typically been able to support such conversions.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

The opinion of the Zoning Administrator was discussed in a previous section of this report.

A summary of the request was distributed to the District Department of Transportation (DDOT) and the DC Fire and Emergency Services Department (FEMS).

OP has met with FEMS and been told that the 15 foot access alley and the 30 foot alleys around the property would likely provide adequate access for fire and emergency vehicles sufficient to serve a one-level building. The department would not likely object to the application as long as:

- The building were properly sprinklered;
- The building's address and location were posted at a point clearly visible to emergency vehicle drivers from a public street;
- Parking restrictions were imposed in the alley to ensure that emergency equipment could access all sides of the building;
- The entrances to any residential unit were clearly marked and discernible from the public alley at the north of the building.

DDOT did not indicate any concerns regarding the request.

No additional agency comments have been received to date.

VI. COMMUNITY COMMENTS

ANC 6B voted unanimously to recommend approval for the request at its properly noticed and attended meeting of January 13, 2009. The ANC believes impacts on air, light and privacy would be negligible.

Three residents of Square 1017 submitted letters of support for converting the "warehouse" to the applicant's "residence". One letter of support from a resident of the Square supported conversion of the "vacated warehouse" to a "home and rental unit".

There was no indication of opposition to the application in the record as of January 26, 2010.

VII. CONCLUSION AND RECOMMENDATION

OP is sympathetic with the desires of the applicant to convert the structure to a residence, and generally supporting of efforts to renovate vacant buildings for use. However, the applicant has not demonstrated undue hardship absent the second unit; or that the property could not be converted to or remarketed as a single family structure if such a use were permitted by the Board. While the

proposal may not have a significant negative impact on the adjacent neighbors, the applicant has not demonstrated that the degree of relief requested would be proportional to the unique circumstances and the hardship the applicant would suffer without relief. Finally, the proposal is clearly and directly contradictory to the current wording and intent of the zoning regulations.

As such, OP cannot, at this time, recommend approval of the requested use variance for a flat.

JS/Stephen Cochran, AICP Project manager